

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 483 of 2015 (A1)

CRL.A 372/2011 OF IV ADDL. SESSIONS COURT, KOLLAM
CC 292/2007 OF J.F.C.M.COURT-III, PUNALUR

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REVISION PETITIONER(S)/APPELLANT/DEFACTO COMPLAINANT:

CATHERINE DANIEL, AGED 57 YEARS,
D/O.RACHEL, ALUVILA VEEDU
PARANKIMAMMUKAL, THALAVOOR VILLAGE, AT PRESENT
RESIDING AT H.NO.33/10,
MAYOR SIVA SHANMUGHAM STREET, NUNGAMBAKKAM,
CHENNAI - 34.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENT(S)/RESPONDENTS/ACCUSED AND STATE:

1. VALSAMMA, AGED 57 YEARS
D/O.THANKACHAN, MANGALASSERI VEEDU, KARUVATTA MURI,
PERINADU VILLAGE, ADOOR TALUK
(NOW RESIDING AT ALUVILA VEEDU, MANJAKKALA MURI,
THALAVOOR VILLAGE. PIN - 691 514.

2. SHAJI @ SAJI, AGED 53 YEARS
S/O.GEORGE, MANGALASSERI VEEDU, KARUVATTA MURI,
PERINADU VILLAGE - 691 601.

3. GEORGE, AGED 83 YEARS
S/O.MATHAI, MANGALASSERI VEEDU, KARUVATTA MURI,
PERINADU VILLAGE, ADOOR TALUK - 691 601.

4. THOMASKUTTY, AGED 66 YEARS,
S/O.YOHANNAN, SUJA BHAVAN, PANTHAPLAVU MURI,
PATTAZHI VILLAGE - 691 522.

5. BABU MATHEW, AGED 62 YEARS,
S/O.MATHAI, KOTTAPANIKKATHU VEEDU, MANJAKKALA MURI,
THALAVOOR VILLAGE - 691 514.

(.....2)

6. PONNAMMA THOMAS, AGED 58 YEARS
D/O.THOMAS, PEACE COTTAGE, PARANKIMAMMUKAL,
MANJAKKALA MURI, THALAVOOR VILLAGE -691 514.

7. ALEX, AGED 55 YEARS
S/O.UNNUNNI, VALIYAVEEDU, PARANKIMAMMUKAL,
MANJAKKALA MURI, THALAVOOR VILLAGE, PIN -691 514.

8. REJI JOHN, AGED 46 YEARS,
S/O.JOHN, ORANALLUR VEEDU, PARANKIMAMMUKAL,
MANJAKKALA MURI, THALAVOOR VILLAGE -691 514.

9. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 31.

R9 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.483 of 2015

Dated this the 1st day of June, 2015.

O R D E R

The revision petitioner is the complainant in C.C.No.292/2007 on the files of the Judicial First Class Magistrate's Court-III, Punalur. She filed Ext.P1 complaint alleging offence punishable under Sections 143, 147, 148, 294(b), 323, 354, 427 and 506(ii) read with Section 149 of the Indian Penal Code against the accused eight in number. They were charge sheeted for the said offence by the police and they stood for trial. The accused pleaded not guilty. After trial, the learned Magistrate found that the prosecution has miserably failed to prove the charge against the accused and acquitted all the accused of the offences alleged against them. Feeling aggrieved, though the de facto complainant preferred Cr1.A.No.372/2011 before the IV Additional Sessions Court, Kollam, after

re-appreciating the evidence on record, the learned Sessions Judge also affirmed the findings of the trial court whereby the trial court acquitted the accused and dismissed the appeal. This revision petition is filed challenging the legality and propriety of the concurrent findings whereby the accused stand acquitted of the offences alleged against them.

2. The prosecution case, in brief, is that the accused persons formed themselves into an unlawful assembly and in prosecution of their common object, accused 1 to 4 voluntarily caused hurt to P.W.1 and the fourth accused by showing a knife, threatened P.W.1, fifth and sixth accused uttered obscene words, seventh accused removed the sari of P.W.1 and torn off her blouse and eighth and ninth accused assisted accused No.7 to commit the above acts and thereby all the accused persons were said to have been committed the offences alleged against them.

3. The learned counsel for the revision petitioner

advanced arguments challenging the concurrent findings of the courts below whereby the courts below found that the prosecution has failed to prove the offences alleged against the accused. According to the learned counsel, the prosecution has successfully proved the charge against the accused beyond doubt. The learned counsel drew my attention to paragraphs 10 and 12 of the impugned judgment and submitted that the courts below went wrong by disbelieving the evidence of P.W.s 4 and 5.

4. The scope and extent of jurisdiction under revisional jurisdiction filed against the acquittal of the accused are very limited confining to glaring illegality, manifest error and perversity of appreciation of evidence. Even if two views are possible, the revisional court is not inclined to reject the views taken by the courts below and substitute the views of the revisional court in that case. This is the principle laid down by the Apex Court in *Ayodhya Singh*

v. State of Bihar [AIR 2005 SC 1022] and Mahatab Singh v. State of Uttar Pradesh [AIR 2009 SC 2298].

5. With the above yardstick, I have meticulously scrutinised the concurrent findings of the courts below. Going by the said findings, it is seen that the prosecution has relied on the evidence of P.Ws.1, 4 and 5. P.Ws.4 and 5 are the witnesses who are alleged to have witnessed the commission of the offence spoken to by P.W.1, the de facto complainant. After analysing the deposition of P.Ws. 1, 4 and 5, in view of Ext.Pl complaint, the court below observed that the presence of P.Ws. 4 and 5 at the place of occurrence is highly suspicious and no reliance can be placed on the evidence of P.W.1. It is also observed that the evidence of P.W.1 is also unbelievable in view of Ext.Pl complaint. On an analysis of the evidence of P.W.1, it is seen that neither in Ext.Pl F.I.Statement nor during the examination she had given any evidence regarding the presence of both P.Ws. 4 and 5.

6. As rightly observed by the courts below, if P.Ws.4 and 5 were present in the scene of occurrence, definitely, P.W.1 could have spoken about their presence, in her evidence. P.W.4 is admittedly residing $1\frac{1}{2}$ km away from the scene of occurrence. P.W.5 is residing 4 km away from the scene of occurrence. But the prosecution has miserably failed to prove their presence in the place of occurrence beyond doubt and no explanation has been given to justify their presence at the place of occurrence. The said observation assumes much significance in view of the admitted evidence that P.Ws.4 and 5 did not accompany P.W.1 to the place of occurrence, though they were said to have come from the very same place. More importantly, in Ext.P1 F.I. Statement given by the complainant, the names of the assailants were not specifically mentioned. Her complaint is that somebody attacked her. They were not properly identified before the court, when P.W.1 was examined

before the court. More over, nothing regarding time of occurrence is brought out while examining P.W.1. There is a delay in filing the complaint, though the police station is situated within a radius of 5 km from the scene of occurrence. The case of P.W.1 is that she had given a complaint to K.S.E.B. for disconnecting the electric connection and the incident occurred in connection with the attempt to disconnect electric connection. But no such complaint was produced before the court. More over, P.W.1 is not a consumer of the said electric connection.

7. Ext.P2 scene mahazar and the evidence of investigating officers show that nearly 25 shops are there in the vicinity and scene of occurrence. But no independent witnesses were arrayed as witnesses in this case. On an overall appreciation of evidence, I find that the courts below have rightly marshalled the evidence on record and appreciated well and arrived at a finding that the prosecution has failed to prove the

offences alleged against the accused. There is no illegality or impropriety in the findings. So also, I do not find any perversity in the appreciation of evidence. Consequently, this revision petition is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.